The City of New York

POLICE DEPARTMENT

November 21, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Joseph Reale
Tax Registry No. 904863
20 Precinct
Disciplinary Case No. 2011-5934

The above-named member of the Department appeared before me on May 29, 2014, charged with the following:

1. Said Police Officer Joseph Reale, while assigned to the 20 Precinct, on or about and between April 29, 2010 and October 3, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer on several occasions requested assistance in the prevention of the processing and adjudication of several summonses issued to several individuals.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Stuart London, Esq., Worth, Longworth & London, LLP.

Respondent, through his counsel, entered a plea of Not Guilty in part to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

Respondent is found Guilty in part.

## INTRODUCTION

The following facts are not in dispute. Respondent is charged with preventing the processing and adjudication of multiple summonses, (i.e. fixing tickets). The evidence presented at trial established three summonses at issue which were captured on recordings dated April 29, 2010, June 24, 2010 and July 11, 2010. These summonses were identified during an extensive wiretap investigation by the Department, in conjunction with the Bronx District Attorney's Office. Detective Leslie Santiago-Maldonado was assigned to investigate this matter. Respondent is a Patrolmen's Benevolent Association (PBA) delegate assigned to the 20 Precinct. He has been a member of this Department for 20 years and a PBA delegate for ten years.

Detective Santiago-Maldonado is a 17-and-a-half year member of the Department currently assigned to the Chief of Internal Affairs Office where she has been assigned for approximately two years working on federal investigations. Prior to that, she was assigned to the Bronx Internal Affairs Bureau where she worked for eight years on cases dealing with misconduct and corruption matters involving members of the service. Santiago-Maldonado had occasion to work on the Bronx ticket fixing investigation where she was assigned to the administrative team. She explained that there was a criminal team which handled the wiretapping and the summons fixing. Her administrative team reviewed the information received from the criminal team and presented evidence at the official Department interviews of the subject officers.

Santiago-Maldonado stated that, initially, Police Officer Christopher Scott was the target of the investigation, not Respondent. She testified that there were typically three terms that were used by police officers when dealing with ticket fixing. The three terms were "[1] police courtesy, [2] taking care of a summons and [3] throwing it in court." She testified that "police courtesy" meant that an officer exercised discretion before actually issuing a summons to another law enforcement officer, a family member, or anyone else the officer chose to exercise discretion with. "Taking care of a summons" meant that an officer had already written the summons but the summons did not reach its destination (e.g. traffic court, or criminal court). Santiago-Maldonado explained that the summons could be taken care of in a number of ways including, removing the summons from the summons box or destroying it. "Throwing it in court" meant that when the summons had reached its destination and at the administrative hearing, the officer would not give full testimony with regard to the summons or omit certain parts of the testimony when testifying.

Respondent was captured on wire-tap recording on three different dates.

What is in dispute is whether Respondent prevented the processing and adjudication of two of the above-mentioned summonses, after having pleaded guilty to the June 24, 2010 incident.

## FINDINGS AND ANALYSIS

### April 29, 2010

On April 29, 2010, Respondent received a phone call from Police Officer Christopher Scott, the PBA delegate of the 48 Precinct. Scott told Respondent that an

officer in the 20 Precinct, Police Officer Quintton, had issued a summons to Sergeant Carlos Hernandez's brother. A transcript of the telephone conversation between Scott and Respondent was received in evidence. See Department's Exhibit (DX 1).

Respondent indicated on the wiretap that he did not know who officer Quintton was and at trial testified that the ticket that Police Officer Ramon Guillen had issued was the same ticket that Scott had called about. In a conversation that Respondent had with Guillen (the officer who issued the summons to Sergeant Hernandez's brother), Guillen told Respondent that he (Guillen) was going to the office of the Civilian Complaint Review Board (CCRB) and that "[Respondent] might be getting a phone call because it was a member of the service's family [that Guillen had issued the summons to]." Guillen also told Respondent that "the guy was rude" and that he wrote him the summons. Respondent denied approaching Guillen about taking care of this summons and also denied removing this summons from the summons drop box because the box was locked.

The Advocate urges the Court to find the conversation between Scott and Respondent on April 29, 2010 (DX 1) as dispositive of Respondent's intent that he spoke to Scott for the purpose of taking care of the summons. However, the telephone conversation and Santiago-Maldonado's testimony does not convince the Court by a preponderance of the evidence that Respondent took care of the summons.

Santiago-Maldonado admitted that Respondent was not even the target of the investigation on this date. The transcript of the telephone conversation between Respondent and Scott (DX 1), illustrates that Respondent did not initiate the conversation with Scott. There also appears to be some confusion about the name of the summons issuing officer. Scott told Respondent that an officer Quintton had issued the summons

but Respondent did know who officer Quintton was or where he worked. The correctly identified summons issuing officer was Guillen. Further, neither Respondent nor Scott used the commonly used terms such as "police courtesy, taking care of a summons or throwing it in court."

The conversation between Respondent and Scott was a discussion about a family member of a sergeant who was issued a summons, identification of the summons issuing officer, and whether a particular street was within the confines of the 20 Precinct. The Advocate did not present any conversations between Respondent and Scott that could have indicated that this summons was taken care of, or that a request was made to take care of it. Nor did the Advocate offer any evidence that, following the conversation between Respondent and Scott, Respondent spoke to Guillen about taking care of the summons. Although Respondent testified that Guillen talked about a CCRB case arising from a summons he issued to a member of the service's family member, the conversation is insufficient to conclude that Respondent asked Guillen to take care of the summons.

Absent further evidence that can lead this Court to find by a preponderance of the evidence that Respondent took care of this summons, Respondent is found Not Guilty for preventing the processing/adjudication of the April 29, 2010 summons.

June 24, 2010

It is uncontested that on June 24, 2010, Scott contacted Respondent about a summons that needed to be taken care of. See DX 2. Respondent told Scott that he would "take care" of the summons that was issued for a red light violation. Respondent admitted that he spoke to the officer who had issued the summons and, as a result, the

person issued the summons was found not guilty. Since Respondent has admitted to taking care of the summons, he is found Guilty of preventing the processing/adjudication of the June 24, 2010 summons.

July 11, 2010

It is uncontested that on July 11, 2010, Kevin Carney, the PBA delegate from the 48 Precinct contacted Respondent about a Criminal Court ('C') summons. (See DX 3 for the telephone conversation transcript). Carney indicated that his partner's cousin received an "open container" summons, last night, from Police Officer Kim. Carney asked Respondent to "help [him] out" with it. Respondent asked Carney for the issuing officer's name and agreed to "reach out" to the midnight tour's PBA delegate and the summons issuing officer. In a follow-up conversation, Respondent called Carney and told him "that thing is taken care of this morning."

Santiago-Maldonado conducted an official Department interview with Respondent on October 3, 2011. During this interview, Respondent told Santiago-Maldonado that he did not have an independent recollection of this event, but recognized his telephone number and his voice on the recording and admitted to "reach[ing] out to facilitate taking care of the summons." Santiago-Maldonado did not know whether the officer who issued the summons, Officer Kim, showed up in court or not. She agreed that a disposition of "Not Guilty" was rendered on the summons, but she did not know why. She did not interview the midnight PBA delegate from the 20 Precinct, and apparently did not interview the officer who issued the summons. She also did not have any indication of whether Respondent actually reached out to the summons issuing

officer nor did she know how the summons was thrown out in court (e.g. Kim's incomplete testimony, non-appearance, or a facial defect in the summons instrument).

Respondent testified that he does not have any independent recollection of the events. Therefore, he could not testify with certainty that he did not reach out to either the midnight PBA delegate or the officer who issued the summons. Respondent agreed that he did not have to reach out to Kim in order to take care of the summons. As an explanation for why he said "that thing is taken care of" during his recorded phone conversation, Respondent said, "[s]ometimes when you get a phone call, you just want to let the other person know that something is taken care of even though it's not, just so you don't constantly get these phone calls." He also denied knowing the final disposition of the summons. A review of the evidence in this matter, however, established that with respect to the July 11, 2010 conversation, Respondent was not simply responding to a call he received by stating that he took care of the summons. Respondent, instead, initiated the telephone call made to Carney and said, "that thing is taken care of."

In addition, Respondent during his official Department interview, was asked specifically whether the conversation he had with [Conyers] meant that he took care of the summons and he stated, "Yes." There is no real explanation that Respondent can offer for making this admission during his interview. It is argued that he just admitted to everything while under the pressure of the interview. And there was quite a bit of discussion as to who "Conyers" was, yet the investigator admitted later in the interview that she may have stated the wrong name. Changing a few letters, the Court can understand how Conyers could have mistakenly been transcribed for Carney.

The fact that there is no clear indication as to why a Not Guilty finding with respect to the summons was made in court, does not undermine the words of Respondent who indicated to Carney that he would reach out to the midnight delegate and the summons issuing officer. And then he followed up with a phone call stating that the "thing is taken care of." This is sufficient to show that Respondent had the intention to take care of the summons.

Accordingly, Respondent is found Guilty of preventing the processing and/or adjudication of the July 11, 2010 summons.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Many officers have been brought up on similar charges and where an officer has been found Guilty of preventing the adjudication of more than one summons, the matter is handled based on precedent. The Assistant Department Advocate asked for the standard penalty and the Court agrees.

Accordingly, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be

terminated at any time without further proceedings. I further recommend that Respondent forfeit 25 vacation days and that he be suspended for a period of five days.

Respectfully submitted,

Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

**APPROVED**

DEC 11 2014
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSEPH REALE
TAX REGISTRY NO. 904863
DISCIPLINARY CASE NO. 2011-5934

From 2005 through 2013, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluations. Respondent has received 13 Excellent Police Duty medals, three Meritorious Police Duty medals and one Commendation in his career to date.

[redacted]

Respondent has no prior formal disciplinary record.

For your consideration.

Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials